

1904-029 Chancery Causes: Dianah Day vs. Isaac S. Anderson &c
Lee Co.

Sewell, Pennington, Haynes, Burgan, Sparks, Jameson,
Steele, Ashcraft

1 Plat

CA-Contract Dispute
T-Property
Womens

-I-

To the Honorable H.A.W.Skeen, Judge of the Circuit court for Lee County, Virginia:

Humbly complaining, your oratrix, Mrs. Dianah Day, respectfully represents that by deed dated the 14th day of November, 1842, and recorded in the county clerk's office of Lee county, in Deed Book No. 9, page 76, John ^{Day} conveyed to Newberry Day a certain tract of land situated in Lee County, Virginia, in what is now known as the "Pocket", on the north side of Stone mountain, and On the Stone (formerly called Stoney) creek, contain one hundred acres more or less; that in the year 1849 your oratrix was married to the said Newberry Day; that, thereafter and until the 8th day of October, 1858, the said Newberry Day was the owner of the said tract of land, and was in the actual possession thereof, during all which time your oratrix was the wife of the said Newberry Day and living with him as such; that on the said 8th day of October, 1858, by deed bearing said date and recorded in said clerk's office in Deed Book No. 13, page 580, the said Newberry Day sold and conveyed the said tract of land to one John S. Burgan, in which conveyance, however, your oratrix did not join, not being willing to relinquish her right of dower in said tract of land; and that on the _____ day of _____ 189____, the said Newberry Day departed this life, whereupon your oratrix, as she is advised, became entitled to her dower in the said tract of land.

By deed dated May 10th, 1890, and recorded in said clerk's office in Deed Book No. 25, page 116, the said John S. Burgan and wife and others sold and conveyed the coal and minerals in on and under the said tract of land, (along with other lands,) to C.T. Duncan, B.H. Sewell and D.C. Sewell.

By deed dated the 22nd day of March, 1893, and recorded in said clerk's office in Deed Book No.29, page 564, the said John S.Burgan and wife sold and conveyed to one George L.Pennington a small boundary of the said tract of land containing about 12 acres, and the said G.L.Pennington is now in the possession of the same

By deed dated the 21st day of October, 1893, and recorded in said clerk's office in Deed Book No.28 page 554, the said John S. Burgan and wife sold and conveyed to their son, John F.Burgan, among other lands, the remainder of the said tract of land, reserving a life estate therein; and in both the said last mentioned deeds there was excepted the rights &c. conveyed to the said C.T.Duncan and others as above set out.

By deed dated the 17th day of June, 1890, and recorded in said clerk's office in Deed Book No.25, page 265, the said C.T.Duncan and D.C.Sewell sold and conveyed their interests in the said tract of land to one Isaac S.Anderson, being a two-thirds of the coal &c. in on and under the same.

By deed dated the 17th day of June, 1890, and recorded in said clerk's office in Deed Book No.25, page 270 the said P.H.Sewell sold and conveyed to one John C.Anderson an undivided half of his interest in the said land, that is, one-sixth of the coal &c. in on and under the same.

By deed dated the 31st day of August, 1900, and recorded in said clerk's office in Deed Book No.36, page 444, the said John C.Anderson sold and conveyed his interest in said land to the said Isaac S.Anderson.

On or about the ____ day of _____, 189__, the said John S.Burgan departed this life, and his widow has since died: so the

life estate reserved in the deed aforesaid from the said John S. Borgan and wife to the said John F. Borgan has terminated.

The said John F. Borgan, on or about the _____ day of _____ 189____, ~~the said John F. Borgan~~ departed this life intestate, leaving a widow, Malinda, who has since intermarried with one Stephen Haynes, and the following children, to whom his interest in the said tract of land descended, to wit: J.S. Borgan, Jr., C.M. Borgan, Andy P. Borgan, Auburn P. Borgan, Rees G. Borgan, Elijah Borgan, Lillie Borgan, and Ida Borgan, the six last named being infants within the age of twenty-one years.

The said coal right &c. is therefore owned jointly by the said Isaac S. Anderson and B.H. Sewell, and the surface by the said Geo. L. Pennington, and the widow and heirs of the said John F. Borgan, deceased, *which coal re had been opened and mined prior to the date of the death of said Newberry Day.*

The object of this bill is to have dower in the said tract of land, for a description of which reference is here made to the deed aforesaid from the said N. Day to the said John S. Borgan, a copy of which is herewith filed as a part hereof, marked Exhibit No. I., assigned to your oratrix; and in order that this object may be attained she prays that the said Isaac S. Anderson, B.H. Sewell, Geo. L. Pennington, Malinda Haynes, J.S. Borgan, Jr., C.M. Borgan, Andy P. Borgan, Auburn P. Borgan, Rees G. Borgan, Elijah Borgan, Lilly Borgan and Ida Borgan be made parties defendant to this suit, and be required to answer its several allegations, but not upon oath, that be ^ywaived; that a guardian ad litem be appointed to answer and defend for said infants; that commissioners be appointed and directed to assign to your oratrix her dower in the said tract of land, and for full general relief.

May Spa. issue &c.

L. P. Ryan, p.q.

Plffs Costs upto
+ including Nov 7 1903

M. Clerk 8.53
Tax 1.50
Sheriff 6.00
Atty 15.00

Diana Day
vs { In Chy.
Isaac S. Anderson
et al.

Bill

1901 2nd Oct rules Bill
filed Spa & entered on
admitt defendants & Deere
Nisi as to them.
11 1st November rules held
the last Monday in Oct
Deere Nisi confirmed
and Cause set for hearing

Defts Costs
Clerk \$1.10

Plffs costs recovered

G.A.L. - - - 5.00

Munsey, clk 10.03

Shff { P.B.L. 2.00
R.M.O. .50
E.S.E. 1.00
Francis 3.50 7.00

N.P. 7.08

Wits 7.00

Elliott 10.50

W. H. B. } Cours 2.00

J. B. K. } 2.00

Ewing, clk 4.77

Atty \$15.00

\$70.38

Melinda Haynes et al

Ads

{ Denure

Diana Day -

Respondents Dayne and say
that the plaintiffs bill is
not sufficient in law,

They assign the following
ground of denure.

That the bill does not
allege the date of the
death of Newberry Day,
and until this is done, the
plaintiffs cannot say whether some
improvements were made in
said Day's life time.

B. H. Sewell, atty
for respondents.

Melinda Haynes-Fox

Ad { Decurves

Desert Day

Excc. S. Anderson & B. H. Small

A. H.

Deant Day,

Respondents Come and say
that the plaintiffs bill is not
sufficient in law.

They assign the following
as grounds of said demur.

The bill does not allege
that the Coal and other
minerals ^{discovered by respondents} under said tract of
land were opened and worked
by Newberry Day in his life
time while he had a deed
for said tract of land,
and said plaintiffs would
have no better rights in
said Coal and Minerals in
an undisturbed condition.

B. H. Small atty
for respondents,

L.S. Anderson et al
Ads { Securities

Deborah Day

To the Hon. H. A. W. Skeen, Judge of the Circuit Court
of Lee County, Virginia:

The demurrer and answer of George L. Pennington to
a bill filed in said court against him and others by Dianna
Day.

Respondent says that said bill is not sufficient
in law and he demurs to the same, and not waiving said demurrer
but relying and insisting thereon, should further answer be
required, he answers as follows:

He supposes it is true that John Day conveyed to
Newberry Day the tract of land containing 100 acres, situated
in the Pocket in Lee County, Virginia, as described, and by
a deed dated and recorded as stated in the bill; that it is
true that on the 8th day of October, 1858, the said Newberry
Day by deed of said date and as recorded as stated in said bill
sold and conveyed the said tract of land to one John S. Burgan
but respondent says that he is not acquainted with the plaintiff,
the said Dianna Day, and denies that she was married to the
said Newberry Day in the year 1849, and denies that from there-
after and until the 8th day of October, 1858, the said Newberry
Day was the owner of the said tract of land and was the actual
possessor thereof, and he denies that during all which time
the said Dianna Day was the wife of the said Newberry Day
and living with him as such; and respondent says that in the
said deed from Newberry Day to John S. Burgan the said Dianna
Day did not join because she was not then the wife of the said
Newberry Day, and he denies that she is entitled to dower
in the said tract of land, as widow of said Newberry Day.

Respondent says that it is true that by deed dated
May the 10th, 1890, and recorded as stated in said bill, the
said John S. Burgan and wife and others sold and conveyed all
the coal and other minerals in, on and under the said tract
of land (along with other lands) to C.T. Duncan, B. H. Sewell
and D. C. Sewell, and that by the chain of conveyances mentioned

in said bill the said coal and other minerals on said tract of land have become vested in and are now owned jointly by Isaac S. Anderson and B. H. Sewell.

Respondent says it is true that the said John S. Burgan and wife conveyed a portion of the said tract of land to him, but there is not as much as 12 acres, as alleged in said deed to him, and that the remaining portion thereof the said John S. Burgan and wife sold and conveyed to John F. Burgan, and that in both said mentioned deeds there was excepted the said coal and other minerals which had theretofore been conveyed to the said Duncan and Sewells as stated in said bill.

It is true that the said John S. Burgan and wife are dead, and that the said John F. Burgan is dead as stated in said bill, and that the said John F. Burgan died intestate, leaving the widow and heirs as stated in said bill.

Respondent says that if the plaintiff should establish her right to dower in the real estate of the said Newberry Day, he denies that she should have dower in this particular tract of land, because he is informed, believes and charges that the said Newberry Day was the owner and in possession of other lands at the time of his death, as alleged in said bill, out of which the said plaintiff should have been endowed, and this being so she would have no right to dower in this particular tract of land, which had been sold by the said Newberry Day *in his life time, and as to the death of the said Newberry Day* and the date thereof, this respondent calls for strict proof.

Respondent says that if the said Newberry Day is dead and the correct date thereof is alleged or shown, that it will be more than ten years prior to the institution of this suit, and that the plaintiff's right, if she had any, to recover dower in said tract of land was and is barred by the statute of limitation which is invoked as a defence by the said respondent against the recovery of said dower in *this*

part of said tract of land, and any way the said plaintiff, is guilty of laches in asserting her right to dower in said tract of land, if she had any, and this doctrine is also invoked in this case as a defence.

Respondent further says that in the said deed of conveyance to him from the said John S. Burgan and wife for a part of said land, and which part would be about 8 acres that he had made some improvements on a part of the said 8 acres, but the principal part of said improvements made by him is on that portion of land conveyed to him by the said John S. Burgan and wife out-side of the 100 acre tract of land in which the said plaintiff is seeking to recover dower.

That he and those under whom he claims are alienees of the said Newberry Day, ^{to dower} ~~and~~ if the plaintiff should establish her right in said land, or in the part conveyed to him, he would have the right under the statute in such case to pay the plaintiff the annual interest during her life on his pro-rata part of the rental value of the said portion of said land after deducting therefrom the value of the said permanent improvements ^{Existing} ~~asserted~~ at the date of the death of the said Newberry Day, and respondent may desire to make ^{Such} application for said purpose at the proper time.

And respondent now denies each and every allegation of the said bill not hereinbefore admitted or denied, and having answered as fully as he is advised it is material, prays to be hence dismissed with his reasonable cost in this behalf expended, and he will ever pray &c.

B. H. Sewell,
Atty for Respondent,

George L. Pennington.
Hds. { Answer
Memorandum Day.

To the Honorable H.A.W.Skeen, Judge of the Circuit Court of Lee County, Virginia:

The joint demurrer and answer of Isaac S. Anderson and B.H. Sewell to a bill filed in said Court against them and others by Dianah Day.

Respondents say that said bill is not sufficient in law and they demur thereto, and not waiving said demurrer, but replying and insisting thereon, should further answer be required, they answer as follows:

That they are not acquainted with the plaintiff, Mrs. Dianah Day, as they have never seen her, and never heard of her till the institution of this suit; they do not know whether or not that in the year 1849 she was married to Newberry Day, that the said Newberry Day was in the actual possession of the tract of land which he conveyed to John S. Burgan, and that the said plaintiff was living with the said Newberry Day as his wife on said tract of land from 1849 up until 1858, and they call for strict proof for all of said allegations in said bill

in so far as these respondents rights ~~are~~ being affected thereby
Respondents say that it is true as shown by the records that by deed dated the 14th day of November, 1842, John Day conveyed to Newberry Day the tract of land situated in the Pocket in Lee County Virginia containing 100 acres more or less as stated in said bill; that by deed dated October the 8th 1858, said Newberry Day sold and conveyed the said tract of land to John S. Burgan; that it is also true that by deed dated May the 10th, 1890 and recorded as stated in bill, the said John S. Burgan and wife and others sold and conveyed the coal and other minerals in, on and under the said tract of land along with other lands to C.T. Duncan, B.H. Sewell and D.C. Sewell; and that by the chain of title deeds mentioned and set out in said bill, the said coal and other minerals on said tract of land became vested in Isaac S. Anderson and B.H. Sewell, and that the said coal and other minerals on said tract of land together with certain mining rights, and privileges, as shown by said deeds, are now jointly owned by the said I.S. Anderson and B.H. Sewell; and they suppose that the surface of the said tract of land is owned by George L. Pennington and the widow and heirs of John F. Burgan, deceased, as set out in said bill.

deny that said coal minerals had been opened and worked prior to the
Respondents ~~say~~ that they ~~are~~ the owners of the coal and other minerals underlying the said surface land, and that the said

date of the death of said Newberry Day and Day

coal and other minerals are in an undeveloped state, and were in such condition at and during the time that the said Newberry Day held a deed for said land, that he did not open and work any mines of the said coal or minerals during the time that he held said deed, or during his life time, nor has any mines been opened ~~and~~ worked thereon by any one, and that your respondents are advised that the said plaintiff if she should be entitled to dower at all ~~in~~ said tract of land, she would have no right to have said coal and minerals ^{be} considered in fixing her right of dower in the said tract of land, as she would have no interest in the same, and that the said coal and minerals would not be disturbed or interfered with by such dower right.

Respondents now denying each and every allegation of said bill not hereinbefore admitted, denied or explained, and having answered as fully as they are advised it is material, they pray to be hence dismissed with their reasonable costs in this behalf expended. And they will ever pray &c.

B. H. Sewell Atty
for Respondents,

Isaac S. Anderson et al,
Ads { Demurren and
 { Quacco.

Diana Day,

Filed in open Court
and by leave thereof
July 10th 1902
A. B. Muncey Clerk

To the Honorable H.A.W.Skeen, Judge of the Circuit Court of Lee County, Virginia:

The joint demurrer and answer of Malinda Haynes, J.S.Burgan jr., and C.M.Burgan to a bill filed in said Court against them and others by Dianah Day.

Respondents say that said bill is not sufficient in law and they demur to the same, and not waiving said demurrer, but relying and insisting thereon, should further answer be required, they answer as follows:

They suppose it is true that John Day conveyed to Newberry Day the tract of land containing 100 acres situated in the Pocket in Lee County, Virginia, as described, and by a deed dated and recorded as stated in the bill; that it is true that on the 8th day of October, 1858, the said Newberry Day by deed of said date and as recorded as stated in said bill, sold and conveyed the said tract of land to one John S.Burgan, but respondents say that they are not acquainted with the plaintiff, the said Dianah Day, and deny that she was married to the said Newberry Day in the year 1849, and deny that from thereafter and until the 8th day of October, 1858, the said Newberry Day was the owner of said tract of land and was in the actual possession thereof, and they deny that during all which time the said Dianah Day was the wife of the said Newberry Day and living with him as such; and respondents say that in the said deed from Newberry Day to John S.Burgan the said Dianah Day did not join because she was not then the wife of the said Newberry Day, and they deny that she is entitled to dower in the said tract of land, *as widow of said Newberry Day,*

Respondents say that it is true that by deed dated May the 10th, 1890, and recorded as stated in said bill, the said John S.Burgan and wife and others sold and conveyed all the coal and other minerals in, on and under the said tract of land (along with other lands) to C.T.Duncan, B.H.Sewell and D.C.Sewell, and that by the chain of conveyances mentioned in said bill the said coal and other minerals on said tract of land have become vested in and are now owned jointly by Isaac S.Anderson and B.H.Sewell.

Respondents say it is true that the said John S.Burgan and wife conveyed about 12 acres of said land to George L.Pennington and that the remaining portion thereof the said John S.Burgan and wife

sold and conveyed to John F. Borgan, and that in both said mentioned deeds there was excepted the said coal and other minerals which had theretofore been conveyed to the said Duncan and Sewells as stated in said bill.

It is true that the said John S. Borgan and wife are dead, and that the said John F. Borgan is dead as stated in said bill, and that the said John F. Borgan died intestate leaving the widow and heirs as stated in said bill.

Copy Respondents say that if the plaintiff should establish her right ~~to dower in the real estate of the said Newberry Day~~ *to dower in the real estate of the said Newberry Day*, they deny that she should have dower in this particular tract of land, because they are informed believe and charge that the said Newberry Day was the owner and in possession of other lands at the time of his death *as alleged in said bill,* out of which the said plaintiff should have been endowed, and this being so she would have no right to dower in this tract of land, which had been sold by the said Newberry Day in his life time, but as to the death of the said Newberry Day and the date thereof these respondents call for strict proof.

Copy Respondents say that if the said Newberry Day is dead and the correct date thereof is alleged or shown, that it will be more than ten years prior to the institution of this suit, and that the plaintiff's right, if she had any, to recover dower in said tract of land was and is barred by the statute of limitation which is invoked as a defence by the said respondents against the recovery of said dower in their part of said tract of land, and any way the said plaintiff, is guilty of laches in asserting her right to dower in said tract of land, if she had any, ~~and this doctrine~~, and this doctrine is also invoked in this case *as a defence.*

Respondents further say that the said John F. Borgan in his life time made valuable and permanent improvements on that part of said tract of land conveyed to him, and that his said widow and heirs since his death have also made valuable and permanent improvements on said portion of said land, and that they and those under whom they claim being alienees of said Newberry Day, would have the right, if the said plaintiff should establish her right of dower in said land, respondents would have the right under the statute in such cases to pay *during her life,* to the said plaintiff the annual interest on the one third of the rental

value of said portion of said land, after deducting therefrom the value of the said permanent improvements, *and respondents may during her life,* *and respondents may* *make such application for said purpose at the proper time.*

And now denying each and every allegation of the said bill not hereinbefore admitted or denied, and having answered as fully as they are advised it is material, respondents pray to be hence dismissed with their reasonable costs in this behalf expended. And they will ever pray &c.

A. H. Sewell & Co.
for Respondents

Plaintiff excepts to that part of the foregoing answer contained in the last paragraph on page 2, because the claim for improvements is not restricted to improvements put upon said land prior to the death of Newberry Day.

Code 1884 § 2278 - 2 Min Inst. 135.

L. J. Hyatt & Co.

Malinda Haynes et al.,
Advs. { Deummen and
 { Cusum.

Divulsh Day.

Filed in open Court
and by leave thereof
July 1902.

A B Munsey Clerk

To the Honorable H.A.W.Skeen, Judge of the Circuit Court of Lee County, Virginia:

The answer of Andy P.Burgan, Auburn P.Burgan, Rees G.Burgan, Elijah Burgan, Lillie Burgan and Ida Burgan, infants under the age of twenty-one years, by Geo.P.Cridlin, their guardian ad litem assigned to defend them in this suit, to a bill of complaint exhibited against them and others in this Honorable Court by Dianah Day.

Respondents reserving to themselves the benefit of all just exceptions to said bill, for answer thereto, or to so much thereof as they are advised it is material that they should answer, answering they say:

That they are infants of tender years, and by reason of their infancy, are incapable of understanding or of taking care of their rights and interests. They therefore, by their said guardian ad litem commend themselves and their rights and interests to the protection of the Court and pray that no decree may be pronounced which will tend to their prejudice.

And for further answer respondents say that they have read carefully the joint demurrer and answer of Malinda Haynes, J.S.Burgan, jr., and C.M.Burgan this day filed to said bill in this cause, and they here adopt the same as their answer, in so far as the same is applicable to their rights as involved in this suit, as fully as if herein at length set out.

And now having fully answered, the said respondents pray to be hence dismissed with their reasonable costs in this behalf expended.

Geo. P. Cridlin

Guardian ad litem for Andy P.Burgan, Auburn P.Burgan, Rees G. Burgan, Elijah Burgan, Lillie Burgan and Ida Burgan

Sworn to before me by Geo.P.Cridlin, guardian ad litem for Andy P.Burgan, Auburn P.Burgan, Rees G.Burgan, Elijah Burgan, Lillie Burgan and Ida Burgan, this the 10th day of July, 1902.

A. B. Murmsey
Clerk of Circuit Court Lee Co. Va.

Maliinda Haynes et al
ads. { du Clay.
Duanah Day

Answer of
Geo. P. Eridlin G.A.

Filed in open Court
and by leave thereof
July 10th 1902

A.B. Muncey Clerk

G.A. Fee \$5.00

Dianah Day,Plaintiff.

vs. (In Chancery.

Isaac S. Anderson, B. H. Sewell, Geo.
L. Pennington, Malinda Haynes, J. S. Burgin, Jr.,
C. M. Burgin, Andy P. Burgin, Auburn P. Burgin,
Reese G. Burgin, Wlijah Burgin, Lilly Burgin &
Ida Burgin the last six being infants,Defendants.

This cause came on agin this the 15th day of February, 1904,
to be heard again upon the papers formerly read herein, and the
report of C. C. Elliott, W. N. G. Barron and J. B. Kirk, Com-
missioners and plat therewith, filed in the clerk's office of
this court, on the 30th day of January, 1904, and was argued
by counsel.

On consideration whereof, and it appearing that the said
report and plat have been filed for more than 10 days, and that
no exceptions have been taken or filed thereto, it is adjudged,
ordered, and decreed, that the said report, be, and the same
is, hereby confirmed and approved.

And it is further adjudged, ordered ~~and~~ and decreed that
the plaintiff take and hold during her natural life, as and for
her dower in the tract of land described in the said report, *and B. H. Sewell*
Ex Cepting therefrom the Coal and Minerals as judged by a former decree herein the tract bounded by the red lines shown on the said plat, which
is bounded and described as follows, to-wit:

Beginning, at red index and "A" on the old line, at or near
Geo. L. Pennington's corner on the side of the ridge, a large
chestnut stump and other marked timber, N. 18 E. 60 poles to the
public road, at the mouth of a hollow at "B"; thence with the
road S. 83 $\frac{1}{4}$ E. 24 poles to a small chestnut on the south bank of
the Mill pond at "C"; S. 10 W. 43 $\frac{3}{4}$ poles ~~W. 44~~ to a small buckeye at
"D"; thence *along* the road, S. 32 $\frac{1}{2}$ E. 6 poles to a stone near an
apple-tree at the corner of the garden; N. 26 $\frac{1}{2}$ E. 48 poles crossing
the creek below the Mill house to the corner at figure 6; thence
with the old line, S. 43 $\frac{1}{2}$ E. 26 poles to letter "F"; thence leaving
old line S. 43 W. 39 poles to a stone, crossing the creek, to "G",
on the north side of the public road; S. 29 W. 94 poles to a stake
in the old line; thence with the same N. 16 W. 44 poles to the

(2)

Beginning, containing $20\frac{1}{2}$ acres more or less.

And it is further adjudged, ordered and decreed, that the plaintiff, Dianah Day recover from the defendants, George L. Pennington, Malinda Haynes, J. S. Burgin, Jr., C. M. Burgin, Andy P. Burgin, Auburn P. Burgin, Reese G. Burgin, Elijah Burgin, Lilly Burgin and Ida Burgin, the costs of this suit, for which execution may issue.

And it is further adjudged, ordered and decreed that the clerk of this court, return to the plaintiff the \$20.00 deposited with him as ^{security for} cost.

And it is further adjudged, ordered and decreed, that the clerk of this court, record in the proper deed book, the decree appointing said commissioner, the said plat and report, and this decree, and tax his fees for said recording as a part of the costs of this suit,

And the cause is stricken from the docket.

And the cause is returned from the docket.

*Deborah Day
vs { du chy.
Isaac S. Anderson, et al
Deceit Trial
Civ. C. B. No. 7 p. 387.*

*Enter this decree
Feb 15th 1904.
H. T. Wilson*

Andy E. Burkin, Auburn P. Burkin, Reese G. Burkin, Elijah Burkin,
Pennington, Melinda Haynes, J. S. Burkin, Jr., G. W. Burkin,
Plaintiff, Deborah Day recover from the defendants, George T.
And it is further adjudged, ordered and decreed, that the
beginning, containing 504 acres more or less.

Dianah Day,

Plaintiff.

vs. (Decree.) In Chancery.

Isaac S. Anderson, B.H. Sewell, Geo. L. Pennington, Malinda Haynes, J. S. Burgan, Jr., C.M. Burgan, Andy P. Burgan, Auburn P. Burgan, Rees G. Burgan, Elijah Burgan, Lilly Burgan and Ida Burgan, the last six being infants, Defendants.

This cause came on this the 8th day of July, 1903, to be heard upon the papers formerly read in the cause, and the depositions of witnesses, and was argued by counsel. On consideration of all which the court is of opinion that the plaintiff is entitled to dower in the tract of land in the bill and proceedings set out, and it is therefore adjudged, ordered and decreed that C.C. Elliot, W.N.G. Barron and J. B. Kirk, ~~xxx~~ who are hereby appointed commissioners for the purpose, do go upon the said tract of land and lay off and assign to the said plaintiff one-third thereof in rental value, as and for her dower therein, and report their action to the court, but in making said assignment they will not take into consideration the coal and other minerals in, on and under the said land, the plaintiff having failed to prove that such coal and other minerals were opened and mined and worked before the death of her husband, Newberry Day, *and it is adjudged ordered and decreed that E.S. Anderson and B.H. Sewell shall have said coal and minerals in said land free from the claims of the said plaintiff.* and it is further adjudged, ordered and decreed that the plaintiff recover from the defendants Geo. L. Pennington, Malinda Haynes, J. S. Burgan, Jr., C.M. Burgan, Andy P. Burgan, Auburn P. Burgan, Rees G. Burgan, Elijah Burgan, Lilly Burgan and Ida Burgan, the costs of her suit in this behalf expended, for which execution may issue.

And the cause is continued.

Diana Day

vs { In Chancery

Isaac S. Anderson et al

Decree for Power

Ent. Ct. B. 7. P. 320.

Enter this decree
July 8, 1903.

H. A. W. Sherr

DIANNA DAY

PLAINTIFF.

VS.

IN CHANCERY.

I.S.ANDERSON, ET AL.

DEFENDANTS.

Upon the calling of this cause, on motion of George L. Pennington, leave is granted him to file his answer herein, which answer is accordingly filed, and the plaintiff replied generally to said answer, and this cause is continued.

Hiawah Day
do { Secret

J.S. Anderson et al.

Entered on Liby O.B.
No 7 Page 202

Enter this,

Nov. 14th 1902.

H. C. W. Stenn

Dianah Day,..... Plaintiff.

vs. (In Chancery.) Decree No.I.

Isaac S.Anderson, B. H. Sewell, Geo.L.Pennington,
Malinda Haynes, J.S.Burgan,Jr., C.M.Burgan, ~~Andy~~
Andy P.Burgan, Auburn P.Burgan, Rees G.Burgan,
Elijah Burgan, Lillie A.Burgan and Ida Burgan, ~~the~~
the six last named being infants within the age
of twenty-one years, Defendants.

On motion of the defendants Isaac S.Anderson and B.H.Sew-
ell, leave is granted them to file their joint and separate de-
murrer ^{in writing} to the plaintiff's bill, which is accordingly filed; and
the plaintiff joined in the said demurrer. And thereupon the
said cause coming on to be heard upon the said bill, demurrer, and
joinder therein, was argued by counsel. On consideration thereof
it is adjudged ordered and decreed that the said demurrer be sus-
tained. And thereupon, on motion of the plaintiff, leave is
granted her to amend her bill, and the said amendment being made
at bar, the said Isaac S.Anderson and B.H.Sewell appeared thereto,
and waived the service of process on the said amended bill.

And thereupon, on motion of the plaintiff, by counsel,
George P.Cridlin is appointed guardian ad litem for the infant
defendants, Andy P., Auburn P., Reese G., Elijah, Lillie and Ida
Burgan; and on motion of the said George P.Cridlin, leave is
granted him to file the answer of said infants, which is accord-
ingly done; and the plaintiff replied generally to the said an-
swer.

And on motion of the said Isaac S.Anderson and B.H.Sewell,
by counsel, leave is granted them to file their joint and separate
demurrer ^{in writing} and answer to the said bill, which is accordingly done;
and the said plaintiff joined in the said demurrer and replied

generally to the said answer.

And on motion of the defendants, Malinda Haynes, J.S.Burgan, Jr., and C.M.Burgan, by counsel, leave is granted them to file their joint and separate demurrer ^{in writing} and answer to the said bill, which is accordingly done; and the plaintiff joined in the said demurrer, and filed an exception to the said answer.

And it appearing to the court that the said Geo.L. Pennington has been duly served with process, but has failed to appear to plead, answer or demur to the said bill, the same is taken for confessed as to him.

And thereupon, this cause, coming on this the 11th day of July, 1902, to be heard upon the said bill of the plaintiff, the said answer of the said guardian ad litem and replication thereto, the said demurrer and answer of the said Isaac S.Anderson and B.H. Sewell and joinder in said demurrer and general replication to said answer, the said demurrer and answer of the said Malinda Haynes, J.S.Burgan, Jr., and C.M.Burgan and joinder in said demurrer and exception to said answer, and the bill taken for confessed as to the said George L.Pennington, was argued by counsel.

On consideration of all which, it is adjudged, ordered and decreed that each of said demurrers be overruled, and that the said exception to the answer of the said Malinda Haynes and others be sustained.

And thereupon, on motion of the said Malinda Haynes, J.S.Burgan, Jr., and C.M.Burgan, by counsel, leave is granted them to amend their said answer, which amendment being made at bar, the plaintiff replied generally to the said answer.

And the cause is continued.

Deamish Day
vs. { In Chy.
Isaac S. Andersson
et al.

Decree noting filing
of answers re

Entered O.D.B.
No 7. P. 115-116

Enter this decree
July 14, 1902.
H. A. W. S.

Diana^h Day

Plaintiff.

vs.

In Chancery

Isaac^s Anderson, B.H. Sewell, Geo, L. Pennington,

Malinda Haynes, J.S. Burgan Jr., C.M. Burgan, Andrew P. Burgan,

Auburn P. Burgan, Rease^s G. Burgan, Eligah Burgan,

Lillie A. and Ida Burgan, the last six being infants

within the age of twenty-one years. Defendants.

On motion of the plaintiff, Geo, ^{P.} Cridlin is appointed guardian ad litem for the infants defendants, Andrew P., Auburn P., Rease G., Eligah, Lillie, and Ida Burgan, and on motion of the said Geo. P. Cridlin ~~leave~~ is granted him to file the answer^s of said infants, which is accordingly done, and the plaintiff replied generally to said answer.

And ^{on} motion of the defendants, Isaac^s Anderson and B.H. Sewell ~~leave~~ is granted them to file their joint and separate demurrer and answer^s to said bill, and the same is accordingly filed; and the plaintiff joined in said demur^r and replied generally to said answer.

And on motion of the said defendants, Malinda Haynes, J.S. Burgan Jr., and C.M. Burgan ~~leave~~ is granted ^{them} to file their joint and separate demurrer and answer^s, and the same is accordingly filed; and the plaintiff joined in demur^r and replied generally to said answer, excepting one paragraph thereof, to which paragraph she filed an exception.

And it appears^y to the court that the said Geo. L. Pennington has been duly served with process, but has failed to appear, ^{read} answer or demur to the said bill, the court ^{doth} to the taking^s The same for confessed as to him.

And thereupon said cause, ^{coming} ~~came~~ on this the 10th day of July, 1902, to be heard upon the bill of complaint, the afore-said demurrers and answers, joinder in said demurrers, replication and ^{to said answers, and the bill taken for confessed} exception, as to the said Geo. L. Pennington, was argued by counsel, On consideration whereof, it is adjudged, ordered and decreed that the said several demurrers to the said bill be overruled; that the said exception to the said answer of the said Malinda H Haynes and others be sustained; and that the cause be continued.

Oranah Day
vs { Lu Chy.

Isaac S. Anderson et al

Decree No. 1. Feb
in q answers rec'd.

Enter this decree
July 1902.

exception as to the said Geo. L. Pennington, was argued by counsel
said demurter and answer, jointly in said demurters replication and
of July 1, 1902, to be heard upon the bill of complaint the afore-
And thereupon said cause came on this the 10th day

NOTICE TO TAKE DEPOSITIONS.

To I.S.Anderson, B.H.Sewell, George L. Pennington, J.S.Burgan,
C.M.Burgan, Andrew P. Burgan, Malinda Haynes, and Geo. P. Cridlin,
guardian ad litem:

You will please teke notice that at the office of ~~Thomas~~ Pryse,
at Beatyville, Ky., on the 11th day of August, 1902, I shall take the
depositions of Dianah Day and others, which depositions, when taken
are intended to be read as evidence in behalf of the said Dianah
Day in a certain suit in Chancery pending in the Circuit Court for
Lee County, wherein she is plaintiff and you are defendants; and
if from any cause said depositions be not begun on that day, or if
begun, be not completed, the same will be adjourned from time to
time and from place to place, until concluded.

And you will further take notice that at the office of L.T.
Hyatt, at Jonesville, Virginia, on the 15th day of August, 1902, I
shall take the depositions of Wm. Pennington and others for the
same purpose. This the 24th day of July, 1902.

Dianah Day,

By, L. T. Hyatt Counsel

Virginia, Lee County, to-wit:

I, L.T.Hyatt, a commissioner in Chancery for the circuit court,
for Lee County, Virginia, the same being a court of record, do hereby
certify that France Miles has this day made oath before me in my
county aforesaid, that he did on the 29th day of ~~August~~^{July} 1902, de-
liver to each of the following named persons, a true copy of the with-
in notice, to-wit: B.H.Sewell, Geo.L.Pennington, J.S.Burgan, Jr.,
C.M.Burgan, Andrew P.Burgan, Malinda Haynes, and Geo.P.Cridlin, guar-
dian ad litem.

Given under my hand this the 13th day of August, 1902

L. T. Hyatt,
Comm. in Chy.

The depositions of Dianah Day and others
taken before me Thomas Pryse a Notary Public
for the County of Lee & State of Kentucky, at
the Drug Store of Thomas Pryse in the town of
Beattyville Kentucky, on the 11 day of
August 1902. to be read as evidence on behalf
of the plaintiff in a Certain Suit in equity pen-
ding in the Circuit Court of Lee County
Virginia, wherein the said Dianah Day
is plaintiff and George L. Pennington and
others are defendants. pursuant to Notice
Hurt attached.

The Witness Dianah Day, being first duly
sworn, deposes as follows;

Qus 1 State your name, age, residence and occupation?

Ans My name is Dianah Day. I will be 68 years old the
25th day of this August 1902. I reside in Lee
County, Ky. Post Office address is Beattyville, Ky.
I am a widow woman keeping house.

Qus 2 Were you acquainted with Newberry Day deceased
in his life time? What relation did you bear to him?
Ans I was. I was his wife.

Qus 3 When were you married to said Newberry Day,
and if you have a Certificate of your Marriage,
I will ask you to please file it with this your
deposition.

Ans I was married to said Newberry Day 22nd or
23rd day of October 1849 on Crooket Creek in
Estill County, Ky. I have a Certified Copy
of our Marriage but not with me. but will
file it hereafter with this my deposition
Marked "A."

The defendants J. S. Anderson B. H. Sewell Malinda Haynes J. S. Burgin and C. M. Burgin by atty. Object and except to question 3. and the answer thereto because same are incompetent, and not the best evidence of the facts mentioned in said answer. and said defendants Object to filing of said certificate here after.

J. H. Roberts, Attorney for J. S. Anderson, B. H. Sewell, Malinda Haynes, J. S. Burgin and C. M. Burgin.

Q 4 Where did said Newberry Day die?

Ans Newberry Day died September 17. 1894.

Q 5 Did you live with him continuously as his wife from the date of your Marriage to him until date of his death?

Ans Yes Sir;

Q 6 did he own and was in possession of the tract of land in controversy in this suit during that time?

Ans He was until he sold it that is his interest.

The above named defendants by their atty Object to question 6. and the answer thereto because the question is leading.

J. H. Roberts, Atty.

Cross examined by J. H. Roberts atty. for the above named defendants.

Q Mrs Day was you ever acquainted with this land in controversy

Ans I never was on the land

Q Where did Mr Newberry Day die?

Ans Mr Day died in Sci County Ky
Ques Whose land did he live on at his death?
Ans His own
Ques Who lives on that land now
Ans I do myself, and have lived on it since Newberry
Day's death.
Ques Do you claim the land that Newberry Day left
at his death as your Homestead?
Ans Yes Sir.
Ques You said in answer to question 10 that your husband
was in possession of the land in controversy; in
this suit. ~~from~~. How do you know that he
was in possession of said land?
Ans I only know from what he said. Mr Day told
me that he had sold the land in Virginia
that is his part of it and had not sold my part
that it was there that I had better go there
and get it.
Ques Ask you if Mr Newberry Day ever lived
in State of Virginia after his marriage to you?
Ans No sir he never did.

Dionah Day

No other witnesses appearing the further taking of
these depositions is adjourned to the 13th day of Augt
1902 11 o'clock am

Thomas Pryse Notary Public

Met pursuant to adjournment at the Drug Store of Thomas
Pryse in Pecanigville Ky. on the 13th day of August
1902. and the plaintiff introduced William Steele who
after being duly sworn deposes and says.

I was well acquainted with Newberry Day during
his life time, my recollection is that he died

in September 1894. I am 74 years old and live
in Lee County Ky. and farmer by occupation
Attest William ^{his} Steele
man

Roscoe C. Pryse,

State of Kentucky
County of Lee } ss

I, Thomas Pryse a Notary Public within and for the County
and State aforesaid, do hereby certify that the foregoing Depo-
sition of Lianah Day and William Steele were duly
taken. Subscribed and sworn to before me at the time and
place and for the purposes therein mentioned, that they
were written by me in their presence and Subscribed by them
in my presence.

The Defendants were represented by J. M. Roberts atty.
Given under my hand and Notary Seal at Middlesboro
Lee County Kentucky, this 13th day of August 1902.

Thomas Pryse Notary Public
Lee County Kentucky

My Commission Expires July 30 1904.

Lianah & Day Plaintiffs
vs } Deposition for
Lee & Birmingham's Exr
Received by mail in
good condition and filed
August 22nd 1902
A. B. Munsey Clerk

Day
wednesday

On 22 of October 1849 Newbury Day
to Dianna Jamison

W.C. McMahon

State of Kentucky } ss.
County of Estill

I J. F. Harris Clerk of the Estill County
Court certify that the foregoing is a true
and correct copy of the Marriage of
Newbury Day & Dianna Jamison
as appear from the record in my
said office Given under my hand
this 22 day of Aug. 1902.

J. F. Harris clk E.C.C.
M. F. Harris D.C.

Exhibit "A." with deposition of
James L. Harris taken at Irvine
Kentucky on February 14th 1903,
to be used in a certain suit in
chancery pending in the circuit

This Exhibit is objected to.

Because Certificate of Clerk
attempts to add to what record
shows.

B. H. Sewell atty for
Plts.

"Exhibit,"

A



~~Attal~~ Atty for the County of New York
wherein Deane & Son is Plaintiff
and Jacob B. Anderson and
others are Defendants
Attest: J. M. Smith
Notary Public.

The Deposition of Thomas Sparks and others taken before me Thomas Pryse a Notary Public for Lee County, Kentucky, at the Office of Thomas Pryse in the town of Beattyville Kentucky on the 10th day of February 1903 Pursuant to Notice hereto attached to be read as evidence in behalf of the plaintiff in certain suit in Chancery now pending in the Circuit Court for Lee County Virginia wherein Hannah Day is plaintiff and Isaac S. Anderson and others are defendants.

Present J. H. Roberts attorney for S. Anderson. B. H. Sewell, Malinda Haynes, J. S. Burgin, C. M. Burgin & George Pendleton.

The witnesses Thomas Sparks being first duly sworn deposes as follows;

Just 1 Please state your age, residence and Occupation?

Ans 10 My age is 62 years residence Beattyville, Lee County Kentucky I am a Farmer.

Just 2 Were you acquainted with Newberry Day in his life time and if so how long did you know him?

Ans 20 Yes Sir, about 36 years.

Just 3 Is he now living or dead, and if dead, when did he die?

Ans 22 He is now dead. In September 1894.

Just 4 Were, and are you also acquainted with Hannah Day and if so how long have you known her?

Ans 25 Yes Sir, ever since the year 1858, or about 36 years

Just 5 What relation, if any, did the said Newberry Day and Hannah Day bear to each other?

Ans 28 They were Man and wife

Just 6 During all the time you have known them, have they lived together as Man and wife, and State in this connection how long you have known them to so live, and how near you have lived to them?

Ans 1 Yes, Sir, about 36 years I have lived in some neighborhood
2 within some 3 or 4 miles of them except about one year
3 when I lived in Estill County Ky some yrs before his death.
4 The defendants J. S. Anderson, P. H. Sewell, Malinda
5 Hagnus, J. S. Burgin, C. M. Burgin, and George
6 Pendleton by their Attorney J. K. Roberts object and
7 except to each and every question, and answers in
8 the foregoing depositions because they are leading
9 and the answers are incompetent and
10 irrelevant, and not the best evidence, and
11 further this witness saith not

Witness claim
1 Day 11/18
Attest
Thomas Pryse

his J. Sparks
not

15 Thomas Jameson another witness being first duly
16 sworn, deposes as follows.

17
18 Quest 1 Please state your age, residence and Occupation?

19 Ans I am 45 years old, I live in Beattyville Lee Co. Kentucky
20 Superintendent of the McGuire Coal Co.

21 Just 2 Were you acquainted with Newberry Day in his life
22 time, and if so how long did you know him?

23 Ans Yes Sir, I knew him since I was a small boy.

24 Just 3 Is he now living or dead, and if dead, when did
25 he die?

26 Ans He is dead, He died in September 1894. I was present
27 when he died, help dress the body and put him away
28 and then helped to bury him,

29 Just 4 Were, and are you also acquainted with Dinah
30 Day, and if so how long have you known her?

31 Ans I am, all my life

32 Just 5 What relation if any, did the said Newberry Day

and Dianah Day bear to each other's

Ans They were man and wife

Ques 6 During all the time you have known them have they lived together as man and wife, and state in this connection how long you have known them to so live, and how near you have lived to them?

Ans Yes always did, all my life. about 4 miles

The defendants J. S. Anderson. B. H. Sewell. Malinda Haynes J. S. Burgin & M. Burgin and George Pendleton by their Attorney J. H. Roberts object and except to each and every question and answers in the foregoing depositions because the questions are leading, and the answers are incompetent and irrelevant, and not the best evidence, and further ^{the} witness saith not.

Witness sworn
1 day \$1.00

Thos Jameson

William Steel another witness being first duly sworn, deposes as follows

Ques 1 Please state your age, residence and occupation?
I am 74 years old. Beattyville Ky. Farmer

Ques 2 Were you acquainted with Newberry Day in his life time, and if so how long did you know him?

Ans Yes Sir, I worked for him, I knew him ever since 1847 to date of his death.

Ques 3 Is he now living or dead, and if dead, when did he die?

Ans He is now dead. He died in September 1894. I was at his house the day before he died, and then I was there the next day when he died, and saw the body laid away.

Ques 4 1 Where. and are you also acquainted with Dianah
2 Day. and if so how long have you known her?

Ans 3 Yes Sir. for about 38 years.

Ques 5 4 What relation if any did the said Newberry Day. and
5 Dianah Day bear to each other?

Ans 6 They were man and wife.

Just 6 7 During all the time you have known them, have
8 they lived together as man and wife, and state in
9 this connection, how long you have known them
10 to so live. and how near you have lived to them?

Ans 11 Yes Sir; for about 38 years. I have lived close neighbors.
12 and never at any time further than 5 or 6 miles
13 from them

14 The defendants J. S. Anderson B. H. Sewell Melinda
15 Heynes J. S. Burgin. C. M. Burgin and George
16 Pondelin by their Attorney J. H. Roberts object and
17 except to each and every question and answer
18 in the foregoing depositions because the questions
19 are leading and the answers are incompetent and
20 irrelevant and not the best evidence. and further
21 insist not.

Attest Thomas Dryse

William ^{for} Steele
Mort

Witness Clause
1 day \$1.00

24 John Ashcraft another witness being first duly
25 sworn deposes as follows.

Just 1 26 Please state your age, residence and Occupation.

Ans 27 I am 68 years old. Matlyndle P. O. Lee County Ky. a Farmer.

Just 2 28 Where. you acquainted with Newberry Day in his life
29 time; if so how long did you know him?

Ans 30 Yes Sir. about 38 years.

Just 3 31 Is he now living or dead. and if dead when did he die?

Ans 32 He is now dead. He died in September 1894, *

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Ques 4 Here and are you also acquainted with Sianah Day and if so how long have you known her?

Ans Yes Sir, about 45 years or ever since their marriage.

Ques 5 What relation if any, did the said Newberry Day and Sianah Day bear to each other?

Ans Man and wife.

Ques 6 During all the ^{time} you have known them, have they lived together as man and wife; and state in this connection how long you have known them to so live, and how near you have lived to them?

Ans Yes Sir, ever since their marriage until the date of his death, not further than 3 miles at any time.

The defendant J. S. Anderson, B. H. Sewell, Melinda Haynes J. S. Burgin, C. M. Burgin, and George Pendleton by their Attorney J. K. Roberts objects and excepts to each and every question and answers in the foregoing deposition because the questions are leading and the answers are incompetent and irrelevant and not the best evidence, and further this witness swears not.

Witness claims
1 day \$1.00

John Ashcraft

State of Kentucky, County of Lee, to wit:
I Thomas Pryse, a Notary Public within and for the County and State aforesaid do hereby certify that the foregoing depositions of Thomas Sparks, Thomas Jamison, William Steele and John Ashcraft, were duly taken, subscribed and sworn to before me, at the time and place and for the purposes therein mentioned.

Given under my hand and Official Seal at Beattyville.

Lee County Kentucky. This 10th day of February 1903.

Thomas Pryse, Notary Public

Lee County Kentucky

Commission Expires
July 30, 1904.

NOTICE TO TAKE DEPOSITIONS!

To Isaac S. Anderson, B. H. Sewell, Geo. L. Pennington, Malinda Haynes, J. S. Burgan, Jr., C. M. Burgan, and Geo. P. Cridlin, guardian ad litem for Andy P. Burgan, Auburn P. Burgan, Rees G. Burgan, Elijah Burgan, Lillie Burgan and Ida Burgan, infants:

You will please take notice that on the 10th day of February, 1903, at the office of Thomas Pryse in the town of Beattyville, Kentucky, I shall proceed to take the depositions of Preston Slone, Thomas Sparks, John Ashcraft and others, and on the 14th day of February, 1903, at the County Court Clerk's Office of Estill County, Kentucky, I shall take the depositions of James F. Harris and others, which depositions, when taken, are intended to be read as evidence in my behalf ~~xxxxxx~~ in a certain suit in chancery pending in the Circuit Court of Lee County, Virginia, wherein I am plaintiff, and you are defendants. And if from any cause the taking of said depositions be not begun at the times stated, or if begun and not completed, the same will be adjourned from time to time and from place to place until completed.

This January 31st, 1903.

Dianah Day,

by L. P. Hyatt, counsel.

Legal Service of the within notice is
hereby accepted. This Feb'y, 3rd 1903,

B. H. Sewell, atty for
the Adult Defendants,

Geo. P. Cridlin, Guardian
ad litem for infant
defendants.

Liamah Day Plff
vs } Depositions for
} Plaintiff.

Isaac S. Anderson & Co.

Received by mail in
good Condition and filed
February the 13th 1903

A. S. Munsey Clerk

Notary fees
Postage
Witness fees

3.00
4.00

\$7.04

N O T I C E T O T A K E D E P O S I T I O N S !

To Isaac S. Anderson, B. H. Sewell, Geo. L. Pennington, Malinda Haynes, J. S. Burgan, Jr., C. M. Burgan, and Geo. P. Cridlin, guardian ad litem for Andy P. Burgan, Auburn P. Burgan, Rees G. Burgan, Elijah Burgan, Lillie Burgan and Ida Burgan, infants:

You will please take notice that on the 10th day of February, 1903, at the office of Thomas Pryse in the town of Beattyville, Kentucky, I shall proceed to take the depositions of Preston Slone, Thomas Sparks, John Ashcraft and others, and on the 14th day of February, 1903, at the County Court Clerk's Office of Estill County, Kentucky, I shall take the depositions of James F. Harris and others, which depositions, when taken, are intended to be read as evidence in my behalf ~~xxxxxx~~ in a certain suit in chancery pending in the Circuit Court of Lee County, Virginia, wherein I am plaintiff, and you are defendants. And if from any cause the taking of said depositions be not begun at the times stated, or if begun and not completed, the same will be adjourned from time to time and from place to place until completed.

This January 31st, 1903.

Dianah Day,

by L. T. Hyatt, counsel.

Legal Service of the within notice
is hereby accepted, This Feb'y. 3rd 1903.

B. H. Sewell Atty for
the adult defendants,

Geo. P. Cridlin Guardian
ad litem for infant
defendants.

The deposition of James F. Harris
taken before me, A. H. Smith a
Notary Public for the County of Estill
in the State of Kentucky in the 14th
day of February 1903. at the Office of
the Clerk of the County Court for said
Estill County Kentucky pursuant to
notice hereto attached, to be read as
evidence on behalf of Plaintiff in a
Certain Suit in Chancery now pending
in the Circuit Court for Lee County
Virginia, wherein Diana Day is
Plaintiff, and Isaac S. Anderson
and others are Defendant.

Question:- State your name, age and
place of residence and occupation?

Ans:- My name is James F. Harris,
my age is 39 years. I reside near
Innis Estill County Kentucky. My
occupation is Clerk of the Estill
County Court.

Question:- Please state whether or not
as such Clerk you are the custodian
of the records of said County of
marriage licenses and of the returns
on same by made by the Minister or
other persons solemnizing matrimony
and of the records of the names and

Dates of marriages of the persons
married in your County?

Ans: I am.

Quest:- Please to state whether there
is or not in your office a record of
the marriage of one Newberry Day
to Diana Jameson, and if there
is such a record, please to give the
date of same as shown by the
records and file a copy of said
records:-

Ans: The records show a marriage
between Newberry Day and Diana
Jameson was on the 22nd day of
October 1849, and I file herewith as
a part of my deposition a copy of
the record and mark same "Exhibit A."
and make it a part of this deposition.

Quest:- State whether or not in the
year 1849 persons desiring to
marry were required to obtain a
license so to do, and for the same to
be returned to the Clerk's Office and
a record made of same?

Ans:- I do not know what the Law
was at that time, but among the
records of my office I find
marriage licenses of that year and
of every other year of the County's
existence, and returns of same
made by the person officiating, and
a record made of same.

2 Exhibit A is objected to because
it is a copy of a record and not
the original. The answer should be
that the record is in the office
and a copy of it is filed herewith.

1 Quest:- Is there on file in your Office
2 a marriage license issued to Newberry
3 Day and Diana Jameson?

4 Ans:- I cannot find such a license,
5 but have made diligent search myself
6 and have also caused my Deputy who
7 constantly stay in the Office to make
8 another search and I cannot find
9 said license. I am satisfied that
10 same has been lost or misplaced,
11 and is not in my Office.

12 Quest:- Please to describe the book
13 and state the purpose of keeping same
14 in which you find the record of
15 said marriage?

16 Ans:- Said book is a very old
17 book, and the leaves are unruled
18 and has no printed forms or heading
19 and contains a record of marriages
20 beginning in January 1809 and
21 ending in 1852. On first page of
22 said book is headed as follows:
23 "Marriage Certificate Book."

24 This book was among the records
25 of my office when I entered same
26 as Clerk some five years ago, and
27 has been in my possession ever
28 since -

29 J. Harris Clerk
30 Esq. of Court

31 Witness Claims 1 day \$1.00

32 Search of Records \$1.00

\$2.00

~~Adjourned until~~

Ordered that further taking be
adjourned till February 21st 1903.
To the same place.

Feby. 14th 1903.

R. H. Smith
Notary.

February 21st 1903.

Met pursuant to adjournment
and proceeded to take the deposition
of Irvine Jameson

R. H. Smith
Notary.

Also the deposition of Irmie Jameson
taken pursuant to Subpoena, on the
21st day of February 1903 at the same
place and for the same purpose as
stated in the Caption, Witness being
first duly sworn deposes as follows:

Question: Please state your age, name,
and residence.

Ans. I am 72 years old, my name is Irmie
Jameson; I reside near Waverly Ky,
Post Office,

Question: Are you acquainted with one
Diana Day,

Ans: I am, she is my sister.

Question: Did you know her husband,
Newberry Day,

Ans. I knew Newberry Day

Quest: Is he living or dead -

Ans: He is dead.

Quest:- Were you present when Newberry
Day and your sister Diana Jameson
were married? If so tell when & where
they were married?

Ans:- They were married in Crooked
Creek in Estab County Kentucky.
I don't remember the date of their
marriage.

Quest: By whom were they married?

Ans:- I don't remember the first name
of the man who officiated, but it was
a Mr. McMahon a Methodist Minister.

Quest: How long has Newberry Day been

dead.²

Ans: I don't recollect exactly, but I think six or seven years. I saw him a few days before he died.

Quest: Where did Newberry Day and his wife Diana Day live after they were married?

Ans: They lived near Beattyville Ky. then Owsley County, but now Lee County Kentucky, And Newberry Day died in Lee County Kentucky.

Attest,

R. W. Smith.

Inmex Jameson.
mod. K.

Jesse Sanford

Witness 1 Day \$1.00

State of Kentucky } S.S.
County of Estill }

I, R. W. Smith a Notary Public within and for the County and State aforesaid, do hereby Certify that the foregoing deposition^s of Inmex Jameson^{and J. J. Harris} was duly taken, subscribed and sworn to before me at the time and place and for the purposes in the Caption mentioned.

Witness my hand and official seal, at Irvine Kentucky on this the 21st day of February 1903.

R. W. Smith.

Notary Public for Estill County Kentucky

My Commission Expires at the End of the next Session of the Senate.

Dianah Day
Depositions

J. S. Anderson et al

Received by mail in
good condition and
filed February 24th
1903.

A. B. Muncey Clerk

Cost of Depositions

Notary's fees 2 days \$4.00

2 witnesses 3.00

Postage .04

\$7.04

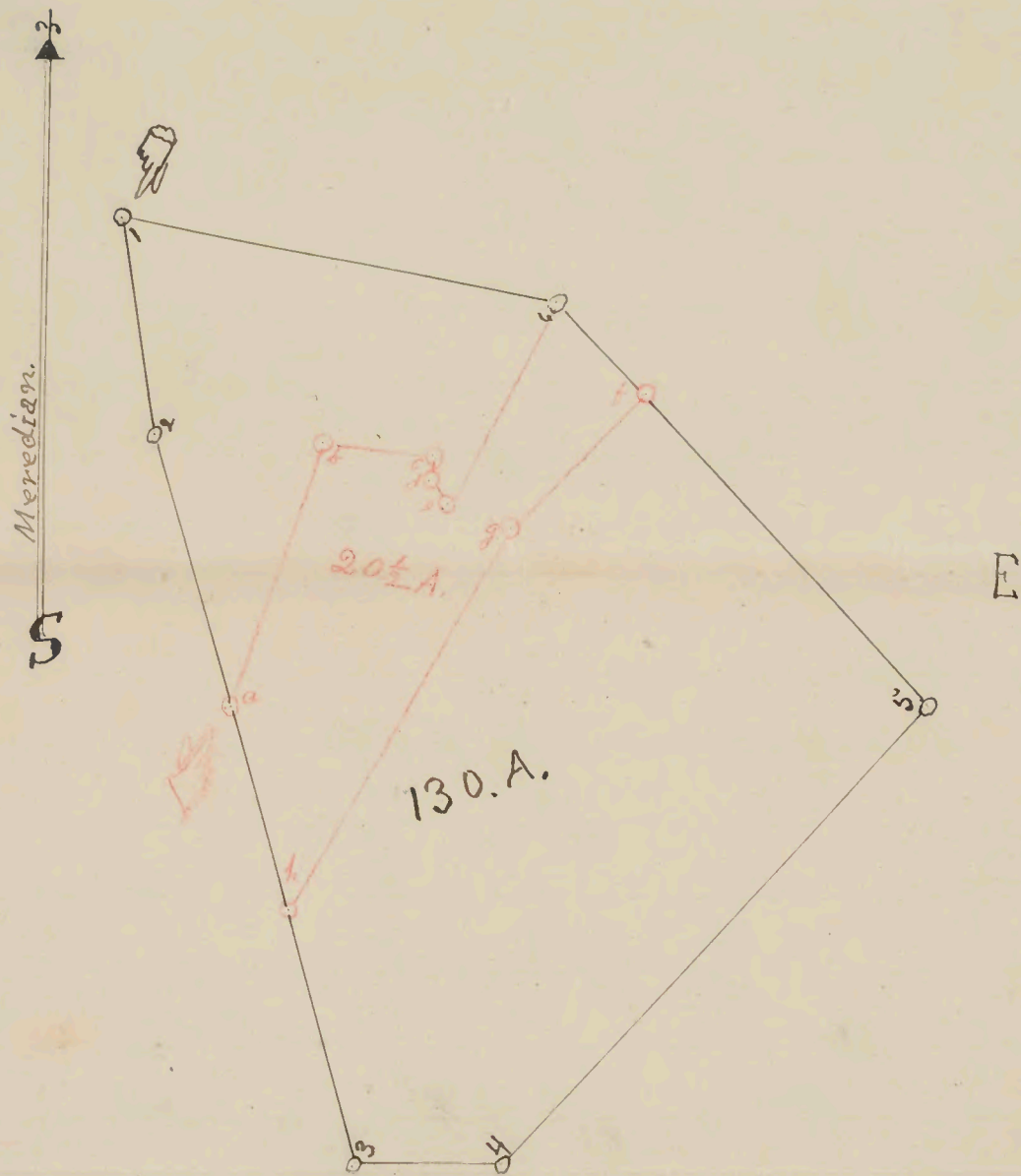
For L. L. Elliott
Order to Lay off Downer
in the Newberry Day Land

costs of her suit in this behalf expended, for which execution may
issue. And the cause is continued .

A copy,

Teste;

A. D. Munsey Clerk .



To The Honorable M. A. W. Skeen Judge of the
Circuit Court of Lee Co. Virginia.

In Pursuance of an Order from your Honor
Court dated the 3rd day of July 1903.

Appointing us the undersigned Commissioners
To go upon the lands in The Bill ~~W~~ Dyeld Diannah
Day Plaintiff V.S. Isaac S. Anderson, B. M. Sevier
George L. Pennington, Malinda Maynes, J. S. Burgin
Jr., G. M. Burgin, Andy, P. Burgin, Auburn, P. Burgin
Reese, P. Burgin, Elijah Burgin Lilly Burgin,
and Ida Burgin Defendants In Chy²

And lay off To Diannah Day The Said
Plaintiff her Dower in the Tract of Land in the
Bill and Proceeding mentioned and assign to the
Said Plaintiff one third thereof in rental
value. We your Commissioners proceeded on
the 20 day of January 1904, to comply with said order
as it directs. And beg leave to report as follows:

The Tract of Land is Bounded as follows.

Beginning on a Pine on the South bank of Stone
Creek near George L. Pennington's Stone House
Thence at figure 1. and index Thence S 10° E 46 poles To a
pile of rocks at figure 2. S 14° E 161 poles To figure 3,
a chestnut and Poplar near the Top of the ridge S 82½° E
32 poles To a cucumber and Chestnut oak N 41½° E 132
To a Maple and Two Beeches S 43½° W 115 poles To a Stake
N 80° W 94 poles To the Beginning containing 130 Acres

We Layed off To Diannah the Sower in Said lands which is represented of Platt by the Red lines and small letters Beging at red index ^a on the old line at or near George L Pennington corner on the side of the ridge a large Chestnut stump and other marked timber N 83 $\frac{1}{4}$ E 60 poles To the Public Road at the mouth of a hollow ^{at} thence with the road S 83 $\frac{1}{4}$ E 24 poles To a small Chestnut on the South bank of the Mill Pond at c. S 10 W 44 $\frac{3}{4}$ poles To a small Buckeye at d. thence along the road S 32 $\frac{1}{2}$ E 6 poles To a Stone near a apple tree at the corner of the garden. N 26 $\frac{1}{2}$ E 48 poles crossing the creek below the Mill house To the corner at figure 6. Thence with the old line S 40 $\frac{1}{2}$ E 26 poles To letter f. Thence leaving old line S 43 W 39 poles To a stone crossing ^{the creek} To g. on the north side of the Public road. S 29 W 94 poles To a Stake in the old line thence with the same N 16 W 44 poles To the Begining containing 20 $\frac{1}{2}$ Acres. more or less.

We file a Platt herewith making it a part of our Report. all of which is Respectfully Submitted

G. L. Elliott
W. H. S. Barron } & am
J. B. Kirk.

Due,

G. L. Elliott. \$6.00 + 4.50

W. H. S. Barron 2.00

J. B. Kirk. 2.00

amt \$10.00

Diannah Day
vs } Report & Plat
J. S. Anderson et al
Filed January 30th 1904
A. B. Murrey Clerk

Recorded. D. B. No. 41 page 305-



THE FIDELITY MUTUAL LIFE INSURANCE COMPANY
OF PHILADELPHIA.

Agency at Irving Ky. 2/23/03

A. B. Munsey Clerk,
Jonesville Va.
Dear Sir.

I send herewith
deposits in case of Day vs.
Anderson my fee \$4.04 will
you see to it that my fee are
sent to me as Mr. Hyatt
promises to do in his letter to
Riddell & Riddell of this place.
By so doing you will greatly
oblige

Yours Very Truly
R. W. Smith.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *Isaac S. Anderson, B. H. Sewell, Geo. L. Pennington, Malinda Haynes, J. S. Burgan Jr., L. M. Burgan, Andy P. Burgan, Auburn P. Burgan, Rees H. Burgan, Elifah Burgan, Lilly Burgan, and Ida Burgan.* The last six being infants

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the said court, on the *3rd* Monday in *October* 1901, to answer a bill in

chancery exhibited against *them* in our said court by *Dianah Day*

And have then there this writ. Witness, A. B. Munsey, Clerk of our said Court, at the court-house, the *15th* day of *October* 1901, and in the 126th year of the Commonwealth.

A copy, Teste:

A. B. Munsey Clerk.

Clerk.

Dianah Day

VS.

} SUBPOENA
IN CHANCERY.

Isaac S. Anderson et al

L. T. Hyatt p. q.

To 2nd October Rules.

1901. Circuit Court.

copy for I. S. Anderson.

Oct 19 = 1901

Executed by Leaving a copy
of the within with

J. S. Anderson, wife

J. R. McDonald

D.S. for

W. S. McLaughlin S. G. C.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee: Greeting:

WE COMMAND YOU, That you summon *Isaac S. Anderson, B. H. Sewell*
Geo. L. Pennington, Malinda Haynes, J. S. Burgan Jr. & M. Burgan,
Andy P. Burgan, Auburn P. Burgan, Rees H. Burgan, Eliph. Burgan
Lilly Burgan & Ida Burgan the last six being infants

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the
said court, on the *3rd* Monday in *October* 1901, to answer a bill in

chancery exhibited against *them* in our said court by *Diana H.*
Day

And have then there this writ. Witness, A. B. Munsey, Clerk of our said Court, at the court-house,
the *15th* day of *October* 1901, and in the 12^{6th} year of the Common-
wealth. A copy, Teste:

A. B. Munsey Clerk.

Clerk.

Virginia, Lee County, to wit:

I, A.B. Munsey, clerk of the circuit court for Lee county, do certify that Joseph Lipps has this day made oath before me that on the 15th day of Oct. 1901 he delivered an attested office copy of the within summon to B.H. Sewell, and that on the 16th day of Oct. 1901, he delivered like copies each to G.L. Pennington, Malinda Haynes, and J.S. Borgan, Jr.

Given under my hand this the 16th day of Oct. 1901.

A.B. Munsey Clerk

Dianah Day

VS.

SUBPOENA
IN CHANCERY.

Isaac S. Anderson et al

L. T. Hyatt p. q.

To *2nd October* Rules.
1901. Circuit Court.

Serve copies on
B. H. Sewell
Malinda Haynes
J. S. Borgan Jr
G. L. Pennington
Andy P Borgan

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

^{again}
WE COMMAND YOU, That you summon *Isaac S. Anderson, B. H. Sewell, Geo. L. Pennington, Melinda Haynes, J. S. Burgan Jr, L. M. Burgan, Andy P. Burgan, Auburn, P. Burgan, Rees H. Burgan, Elijah Burgan, Lilly Burgan & Ida Burgan, the last six being infants*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the

said court, on the *3rd* Monday in *October* 1901, to answer a bill in

chancery exhibited against *them* in our said court by *Dianah*

Day

And have then there this writ. Witness, A. B. Munsey, Clerk of our said Court, at the court-house,

the *16th* day of *October* 1901, and in the 126th year of the Common-

wealth.

A copy, Teste:

A. B. Munsey Clerk.

Clerk.

Dianah Day

vs.

SUBPOENA
IN CHANCERY.

Isaac S. Anderson, et al

L. T. Hyatt

p. q.

To 2nd October Rules.

1901. Circuit Court.

Executed Oct 19th 1901
by Delivering a true copy
of the within Sworn
to Charles Burgen also
further Executed by
Tacking a copy of the
within Sworn on
the front door of Aubrey
P Burgen's dwelling house
at home

Robert E. Evans's
Oxford for W. J. Williams
4 per